

Fax cover sheet

To: Renata Hesse, Trial Attorney

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Subj: Antitrust Settlement - U.S. v Microsoft

Summary: Please go back and do it right.

Size: 4 pages including cover sheet

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16 January 2002

Renata Hesse, Trial Attorney
Suite 1200
Antitrust Division
Department of Justice
601 D Street NW
Washington, DC 20530
Fax: 202-616-9937

Dear Ms Hesse,

In the matter of US v. Microsoft: I do not believe that 'punishing' a company convicted of illegally maintaining a monopoly by offering it a chance to extend that monopoly into one of the few markets it does not already control will prove an effective deterrent.

In my opinion, any penalty which might impede Microsoft's illegal monopoly growth must include at least the following elements:

- 1) Microsoft must publish all specifications to all its file formats.

Much of Microsoft's power arises from the fact that its Office suite has been bundled with new computers so much that it is a defacto standard. Other word processors and spreadsheets try to build conversion routines so that they can read and write Microsoft files, but they depend on reverse-engineering to try to find out what the file format is, so they have limited success. A published specification would allow Microsoft its precious right to innovate, but would permit other developers to make truly compatible software. This way Microsoft would have to compete on usefulness and not on obfuscating their files.

- 2) Microsoft must publish all Application Programming Interfaces (API's) exposed by its operating systems.

Programs written using operating system API's are usually easier to write, and usually run faster. Microsoft has been shown in the past to publish most of their API's so that third party software can be written, but reserve some knowlege of API's so that third party software won't run quite as well as Microsoft software.

- 3) Microsoft must publish its price structure. Said price structure cannot penalize vendors who sell non-Microsoft products and operating systems. From the purchaser's point of view, when vendors sell a computer with Windows located the vendor must include the cost of the operating system as a line item.

I believe this is the most extreme penalty. Pricing is usually considered a trade secret, but Microsoft has been shown in too many instances to set prices for a specific contract not according to volume or any other objective measure, but purely to reward its friends and punish its enemies.

This will also allow consumers to compare the price they pay for various operating systems that can run on their computers.

4) Microsoft must use independently published networking protocols. If Microsoft wishes to extend a networking protocol it must submit the extension to an independent body such as IEEE for approval.

One of Microsoft's common practices to discourage competition is called "embrace and extend". In other words, take something that works for everyone, and make it so that it only works with Windows. One recent example of this is the Windows 2000 implementation of the published Kerberos security protocol. It looked a lot like something that would work with other Kerberos clients and servers, but was just different enough that it didn't, thereby requiring organizations that wished to use Kerberos authentication for their Windows 2000 boxes to have a Windows 2000 Kerberos server, even if they had an existing Kerberos server they had been using for years for other platforms that ran well.

5) Microsoft must be prohibited from pursuing legal action against people helping to enforce penalties 1 through 4, and people who publish reviews and comparisons unfavorable to Microsoft.

Penalty 5 is required because Microsoft has a history of attempting to suppress reviews that find that other products outperform the Microsoft product by threat of legal action. Microsoft claims that involving their product in "unsanctioned" evaluations is a violation of the license terms. Thus this penalty is required both to allow legitimate journalistic and evaluatory functions and specifically to protect individuals and groups engaged in the research necessary to monitor penalties 1, 2, and 4.

This behavior is particularly loathsome when Microsoft attempts to sweep security flaws under the table, as they usually do. (See their recent Security Through Obscurity program, formally known as the Microsoft Certified Security Partner Program.) If Microsoft is allowed to continue business as they have in the past they will only increase the risk to business and national security that they are now.

Penalty 3 is a matter for accountants. It is obnoxious but straightforward to monitor.

Penalties 1, 2, and 4 would be most easily monitored by providing a bounty (to be paid by Microsoft) for individuals or groups who examine Microsoft's products and find instances where Microsoft has failed to comply.

In addition to the bounty for those who find violations, Microsoft should be required to pay a substantial fine for each violation. Perhaps this fine could be applied to some existing educational fund.

Please note that I have not requested that Microsoft reveal any of its code, only the interface to use the code. Neither have I suggested that Microsoft not be allowed to innovate, only that they should stop trying to skew the playing field so that others can innovate as well.

The damage to consumers created by Microsoft as a monopoly was demonstrated during the recent trial, but I will provide three specific damages, and one instance of each:

1) Microsoft only innovates (or buys innovation to include with its products) where it has competition.

When Lotus 1-2-3 was the dominant spreadsheet Excel received frequent and noticeable enhancements, to the point where it became the clearly superior choice. Now Excel has obliterated the competition, and I cannot recall the last useful function added to it.

2) Microsoft lowers prices where it has competition and raises them where it does not.

When WordPerfect and other word processors offered serious competition to Microsoft Word the list price for Word was US\$99.00 and I could have bought it for \$59. Today the list price for Word is US\$399 and the lowest price C-Net can find is \$275.

3) Microsoft has a history of trying to stifle other innovators.

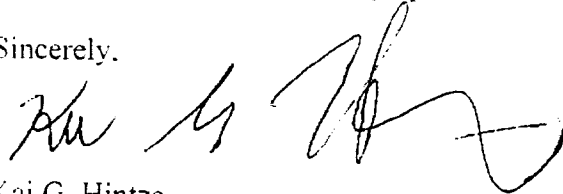
Microsoft has a current lawsuit against Lindows.com Inc., claiming that their name will confuse buyers. But Lindows is the most reasonable name for the company, given that their stated goal is to be able use Linux to run programs written for Windows. It looks to me like Microsoft prefers litigation to innovation.

I hope that you will see that the published settlement proposal only benefits Microsoft (and that only in the short run), and demand that they return to the table to create a settlement that will benefit everyone.

Thank you for your attention.

Please note that this letter is my opinion only, and may or may not represent the view of my company. However I include my title as evidence that I am familiar with the computer industry, and that my opinions are reasoned and backed by experience.

Sincerely,



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